



DEPARTMENT OF THE AIR FORCE
WASHINGTON, DC

Office of the Assistant Secretary

MAY 04 1998

AFBCMR96-02325

MEMORANDUM FOR THE CHIEF OF STAFF

Having received and considered the recommendation of the Air Force Board for Correction of Military Records and under the authority of Section 1552, Title 10, United States Code (70A Stat 116), it is directed that:

The pertinent military records of the Department of the Air Force relating to [REDACTED] be corrected to show that the Promotion Recommendation (PRF) AF F [REDACTED] for consideration by the Calendar Year 1995A Colonel Chaplain Board, convened on 15 Mar 95, be amended in Section VI, Group Size, to read "6" rather than "1."

It is further directed that he be considered for promotion to the grade of colonel by a Special Selection Board for the Calendar Year 1995A Colonel Chaplain Board, which convened on 15 Mar 95, with the corrected PRF.


JOE G. LINEBERGER
Director
Air Force Review Boards Agency

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: 96-02325

COUNSEL: GARY R. MYERS

HEARING DESIRED: YES MAY 04 1998

APPLICANT REQUESTS THAT:

He be directly promoted to the grade of colonel with a date of rank (DOR) which the Board determines to be proper.

APPLICANT CONTENDS THAT:

He was denied promotion because of biased Officer Performance Reports (OPRs) which were part of his record. These OPRs, four in number, were expunged from his record. A Special Selection Board (SSB) was convened and he was again nonselected. At this SSB his record was devoid of the four OPRs, but this meant that much of his career as a lieutenant colonel was not available to the SSB.

He was wrongfully accused of child molestation while stationed at MacDill AFB in 1983. He was totally exonerated of these charges. Nonetheless, these false charges formed the basis for a continued series of negative events that served to undermine his career.

He believes that another SSB is not the solution. A clear injustice has been done. The removal of four OPRs is insurmountable, not to mention the loss of opportunity that was caused by his persecution. The only meaningful solution is for the Board to directly promote him.

In support of his appeal, the applicant provided a three-page counsel's brief, and his AFR 31-11 and AFI 36-2401 appeal applications and supporting documentation.

Applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS:

Information extracted from the Personnel Data System (PDS) indicates that the applicant is currently serving on active duty in the grade of lieutenant colonel, having been promoted to that grade on 1 Jun 90. His Total Active Federal Military Service Date (TAFMSD) was 22 Jun 77.

Applicant's OER/OPR profile since 1986 follows:

<u>PERIOD ENDING</u>	<u>EVALUATION</u>
5 Mar 86 (Maj)	1-1-1
5 Mar 87	1-1-1
5 Mar 88	██████
4 Feb 89	Meets Standards
4 Feb 90	Removed by Order of Chief of Staff
3 Oct 90 (Lt Col)	Removed by Order of Chief of Staff
1 Jul 91	Meet Standards
1 Jul 92	Removed by Order of Chief of Staff
7 Jun 93	Removed by Order of Chief of Staff
# 15 Apr 94	Meets Standards
15 Apr 95	Meets Standards
## 15 Apr 96	Meets Standards

Top Report - **CY95A** (15 Mar 95) Colonel Chaplain Board.
Top Report - CY96A (8 Jul 96) Colonel Chaplain Board.

As a result of decisions by the Officer Personnel Records Review Board (OPRRB) to remove the applicant's OPRs closing 4 Feb 90 and 3 Oct 90, and the Evaluation Report Appeal Board (ERAB) to remove his OPRs closing 1 Jul 92 and 7 Jun 93 and replace his P0695A Promotion Recommendation Form (PRF), on 31 Jul 95, he was considered by an SSB for promotion to the grade of colonel by the CY95A Central Colonel Chaplain Board, which convened on 15 Mar 95. He was not selected for promotion by the SSB.

AIR FORCE EVALUATION:

The Appeals and SSB Branch, AFPC/DPPPA, reviewed this application and recommended denial. According to DPPPA, it must be understood that the remedy used by the Air Force when a record is corrected is SSB consideration. Regardless of the circumstances, the applicant received the same reconsideration received by all officers who have had significant, or in some cases insignificant, changes made to their record through the appeal process. It is not within their discretion to recommend direct promotion of Air Force officers, as they use the board process to consider all officers for promotion in the same manner. The applicant has successfully appealed the OPRs believed to be prejudicial, had them removed, and replaced his P0695A PRF. DPPPA's response to record correction of that degree is always SSB consideration. In that the applicant has received the same treatment as all other officers who have had reports removed, DPPPA believes he has been treated in a manner consistent with the governing regulation. For this reason, they do not recommend direct promotion.

DPPPA pointed out that the applicant received SSB consideration with a corrected (upgraded) PRF reflecting a "Definitely Promote" (DP) with a group size of "1" in Block VI. The policy governing the changing of the group size on a PRF to "1" when it has been upgraded from a "Promote" to a DP has changed, mandating that the group size remain the same as was indicated on the original report. Should the AFBCMR determine that SSB consideration is equitable for the applicant, DPPPA indicated that they would not recommend against awarding the applicant SSB consideration with the P0695A PRF reflecting a group size of "6," as was on the original report.

A complete copy of the DPPPA evaluation is at Exhibit C.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

Copies of the Air Force evaluation were forwarded to applicant and counsel on 23 Sep 96 and 11 Nov 97 for review and response. As of this date, no response has been received by this office (Exhibit D).

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.
2. The application was timely filed.
3. Sufficient relevant evidence has been presented to demonstrate the existence of probable error or injustice. We note that when the applicant was considered for promotion to the grade of colonel by an SSB, the group size on his reaccomplished PRF prepared for consideration by the CY96A Colonel Chaplain Board was changed from a "6" to a "1." Since the group size should have remained the same as the group size on the PRF considered by the original board, we recommend that the PRF be amended to reflect a group size of "6." We further recommend that the applicant be provided appropriate SSB consideration with his corrected record.
4. Insufficient relevant evidence has been presented to demonstrate the existence of probable error or injustice regarding the applicant's request for direct promotion. The use of selection boards to select officers for promotion is a highly sensitive and discretionary function and their actions cannot be presumed. In the selection process, officers compete for promotion under the whole person concept whereby OPRs and PRFs are but one of many factors assessed by selection boards. An officer may be qualified but, in the judgment of a duly constituted selection board, vested with discretionary authority

to score his or her record, may not receive a high enough score to warrant selection for promotion simply because of the limited number of promotion vacancies. We believe that, in order to justify a Secretarial promotion, there must be evidence that the officer has suffered an error or an injustice and persuasive evidence that the officer's record cannot be fairly considered by a duly constituted selection board. We have found that the former condition has been fulfilled but not the latter. It is true that, when he was first considered for promotion to lieutenant colonel, four OPRs had been removed from the record and of the four OPRs, three were among the five reports he received as a lieutenant colonel. The applicant's situation, while unfortunate, in and of itself, does not warrant a direct promotion by this Board. We believe it must be noted that based on the limited number of promotion vacancies available for chaplains to colonel, the selection process **is** highly competitive and there is no guarantee the applicant would have been promoted under any circumstances. In view of the fact that the applicant did have two OPRs in the file documenting his performance as a lieutenant colonel, as well as all the performance reports documenting his earlier record of performance; the action of the ERAB to substitute a DP recommendation for the CY 95A selection board; and the action we propose to further correct the contested PRF to show he did not receive the DP recommendation in isolation, i.e., that his review group size was "6", it is our opinion that a duly constituted selection board would have at its disposal an adequate record to make a reasonable and fair determination concerning the applicant's potential to serve in the higher grade in relation to his peers. Based on the foregoing, we are not inclined to usurp the discretionary authority of a duly constituted selection board. In our estimation, placing the corrected record before an SSB was, and is, the appropriate course of action in this case.

THE BOARD RECOMMENDS THAT:

The pertinent military records of the Department of the Air Force relating to APPLICANT, be corrected to show that the Promotion Recommendation (PRF), AF Form 709, prepared for consideration by the Calendar Year 1995A Colonel Chaplain Board, which convened on 15 Mar 95, be amended in Section VI, Group Size, to read "6" rather than "1."

It is further recommended that he be considered for promotion to the grade of colonel by a Special Selection Board for the Calendar Year 1995A Colonel Chaplain Board, which convened on 15 Mar 95, with the corrected PRF.

The following members of the Board considered this application in Executive Session on 31 Mar 98, under the provisions of AFI 36-2603:

Mr. Benedict A. Kausal IV, Panel Chair
Ms. Dorothy P. Loeb, Member
Mr. Richard A. Peterson, Member

All members voted to correct the records, as recommended. The following documentary evidence was considered:

Exhibit A. DD Form 149, dated 13 Aug 96, w/atchs.
Exhibit B. Applicant's Master Personnel Records.
Exhibit C. Letter, AFPC/DPPPA, dated 9 Sep 96.
Exhibit D. Letters, SAF/MIBR and AFBCMR, dated 23 Sep 96 and 11 Nov 97.



BENEDICT A. KAUSAL IV
Panel Chair



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS AIR FORCE MILITARY PERSONNEL CENTER
RANDOLPH AIR FORCE BASE TEXAS

MEMORANDUM FOR AFBCMR

09 SEP 1996

FROM: HQ AFPC/DPPPA
550 C Street West, Suite 8
Randolph AFB TX 78150-4710

SUBJECT: AFI 36-2603 Application [REDACTED]

Requested Action. Applicant requests direct promotion to the grade of colonel. He does not request a specific date of rank (DOR).

Basis for Request. Applicant states he cannot be fairly considered by a special selection board (SSB), due to the fact that he has had four officer performance reports (OPRs) removed through the appeal process, and this leaves the board with an incomplete view of his duty performance for several reporting periods. Applicant further contends that his career potential was irreparably damaged by a biased former rater who conveyed prejudicial information to commanders and subsequent raters throughout the Air Force Chaplain community.

Recommendation. Deny.

Facts and Comments:

a. Application is timely. Applicant submitted an appeal to the Officer Personnel Records Review Board (OPRRB), 10 May 93, which was approved, removing the applicant's OPRs closing out on 4 Feb 90 and 3 Oct 90. The applicant also submitted an appeal to the Evaluation Report Appeal Board (ERAB), 11 Jul 95, which was approved and removed the OPRs closing out on 1 Jul 92 and 7 Jun 93 and replaced the applicant's CY95A (15 Mar 95) (P0695A) promotion recommendation form (PRF). The letter announcing the OPRRB and ERAB's decisions are included in the applicant's appeal package. The applicant was subsequently granted SSB consideration for the P0695A board by the 31 Jul 95 SSB, and was nonselected for promotion by the board.

b. AFR 36-10, The Officer Evaluation System, 1 Aug 88, is the governing directive. Applicant has one promotion nonselection by the P0695A board.

c. In support of his appeal, the applicant submits a brief from civilian counsel, excerpts from his previous appeal packages, and letters of support and explanation from evaluators and commanders both inside and outside the applicant's rating chain. The basic contention in this appeal is that, due to the removed reports, the applicant cannot receive fair and

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equitable consideration by an SSB. He believes his record is at an unfair disadvantage as a result of the OPRs being removed through the appeal process. It is his contention that this creates a void of unrated service time which detracts from his promotion potential when considered against his peers. The applicant also contends that his career opportunities have been hindered by a former evaluator who has purportedly prejudiced future raters and Chaplain commanders against him. The applicant includes a letter sent by the former rater in his appeal package.

d. It must be understood that the remedy used by the Air Force when a record is corrected is SSB consideration. Regardless of the circumstances, the applicant received the same reconsideration received by all officers who have had significant, or in some cases insignificant, changes made to their record through the appeal process. It is not within our discretion to recommend direct promotion of Air Force officers, as we use the board process to consider all officers for promotion in the same manner. The applicant has successfully appealed the OPRs believed to be prejudicial, had them removed, and replaced his P0695A PRF. Our response to record correction of that degree is always SSB consideration. In that the applicant has received the same treatment as all other officers who have had reports removed, we believe he has been treated in a manner consistent with the governing regulation. For this reason, we do not recommend direct promotion.

e. We would point out that the applicant received SSB consideration with a corrected (upgraded) PRF reflecting a "Definitely Promote" (DP) with a group size of "1" in Block VI. Policy governing the changing of the group size on a PRF to "1" when it has been upgraded from a "Promote" to a DP has changed, mandating that the group size remain the same as was indicated on the original report. Should the AFBCMR determine that SSB consideration is equitable for the applicant, we would not recommend against awarding the applicant SSB consideration with the P0695A PRF reflecting a group size of "6," as was on the original report.

Summary. Based on the evidence provided, our recommendation of denial is appropriate.


Marianne Sterling
MARIANNE STERLING, Lt Col, USAF
Chief, Appeals and SSB Branch
Directorate of Personnel Program Mgt

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